(16)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 720

JAMES O. HARTMAN, *Petitioner*,

v.

WILLIE ROSS, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

FRANK J. HOGAN,
EDMUND L. JONES,
Counsel for Petitioner.

HOWARD BOYD,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, James O. Hartman, respectfully files and submits this as his petition for a writ of *certiorari* to review a decision and judgment of the United States Court of Appeals for the District of Columbia.

Said Court of Appeals on November 22, 1943, reversed a decision and judgment of the District Court of the United States for the District of Columbia in favor of petitioner and against respondent herein (R. 11). That decision, as yet, is unreported.

SUMMARY STATEMENT OF MATTER INVOLVED.

The evidence in this case was presented to the trial court through a stipulation of facts (R. 3). It was conceded

that only one question of law was involved, whether the action of the defendant's servant was negligence proximately causing plaintiff's injuries. In short, the stipulation stated that the defendant's servant drove the defendant's motor vehicle to the entrance of a garage in an alley and left it for the garage attendant to drive it inside for night storage. The ignition was left unlocked, the key in the switch, awaiting the removal of the truck inside the garage by the attendant. This was in breach of a traffic regulation which required motor vehicles to be kept locked. While so parked in the alley, some person, unknown to either of the parties to this suit, drove the truck away. An hour and forty-five minutes later, while being driven carelessly by this unknown person, without the permission or knowledge of the defendant, and not on the defendant's business, the truck collided with the plaintiff to his injury.

After a consideration of the stipulation, the trial court, upon authority of a prior decision of the United States Court of Appeals for the District of Columbia deciding the identical question raised in the instant case, directed a verdict for the defendant. An appeal was taken from the District Court for the District of Columbia to the United States Court of Appeals, where the decision was reversed. (R. 11).

QUESTION PRESENTED.

Was the violation of Section 58 of Traffic and Motor Vehicle Regulations for the District of Columbia by the petitioner the proximate cause of the respondent's injuries?

THE REGULATION INVOLVED.

> "Locks on Motor Vehicles. Every motor vehicle shall be equipped with a lock suitable to lock the starting lever, throttle, or switch, or gear shift lever, by which the vehicle is set in motion, and no person shall allow any motor vehicle operated by him to stand or remain unattended on any street or in any public place without first having locked the lever, throttle, or switch by which said motor vehicle may be set in motion."

Traffic and Motor Vehicle Regulations for the District of Columbia, Section 58.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

In deciding this case the Court of Appeals has pronounced a principle of law to be universally applied which is unsound and in conflict with prior decisions of its own and those of other courts. It has abolished the distinctions between "conditions", "remote" and "proximate causes", and has established a unique concept of legal causation, destructive of what was heretofore considered fundamental in the law of torts.

This Court should consider the doctrine adopted by the Court of Appeals in order to reaffirm or reject the previously established principles of legal causation and thereby dispel confusion which will otherwise arise.

PRAYER.

Wherefore, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this Court directed to the United States Court of Appeals for the District of Columbia, commanding the said court to certify and send to this Court a full and complete transcript of the record and all proceedings in said United States Court of Appeals in said case therein entitled, namely, *Willie Ross, Appellant* v. *James O. Hartman, Appellee*, No. 8413, to the end that said case may be reviewed and determined by this Court and that the judgment of the United States Court of Appeals for the District of Columbia may then be reversed.

JAMES O. HARTMAN,
Petitioner,

By FRANK J. HOGAN,
EDMUND L. JONES,
Counsel for Petitioner.

HOWARD BOYD,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. .....

JAMES O. HARTMAN, *Petitioner*,

v.

WILLIE ROSS, *Respondent*.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The opinion of the United States Court of Appeals for the District of Columbia will be found beginning at page ... of the record herein. It has not as yet been officially reported.

Jurisdiction.

The decision of the United States Court of Appeals for the District of Columbia was rendered on November 22, 1943. The jurisdiction of this Court is based on Section 240(a) of the Judicial Code as amended by the Act of February 13, 1935, 43 Stat. 936, 28 U. S. C., Sec. 347(a).

Question Presented.

The question presented is stated in the petition (*supra*, p. 2).

Specification of Errors.

(1) The decision of the Court of Appeals is predicated on a false premise. That court asserts as a basic principle of universal applicability the proposition that where a statute or ordinance designed to prevent a particular hazard is breached and injury subsequently arises, the proximate cause of such injury is necessarily the breach of the statute or ordinance irrespective of any independent, intervening responsible agency. In its broad, all embracing implications, this proposition is clearly erroneous.

(2) Contrary to every prior decision involving essentially the same facts, and reversing a decision of its own which had stood since 1916, the Court of Appeals erroneously held that petitioner's act was the proximate cause of respondent's injury.

(3) The Court of Appeals erred when it ruled *as a matter of law* that petitioner's act was the proximate cause of the injury to the respondent herein. At most this is a question of fact for the jury.

ARGUMENT.

(1) The Court Established an Erroneous Doctrine of Legal Causation.

The Court of Appeals asserted that the violation of a city ordinance designed to prevent a particular hazard is the proximate cause of subsequent injury irrespective of any independent, intervening responsible agency.

The effect of this doctrine is far reaching and unique in the law of torts. It destroys the fundamental concepts of "condition", "remote" and "proximate cause". This is best illustrated factually by a consideration of the effect of the decision. It is not only the logical but also intended result of the decision that if a person should leave his automobile unlocked on the street, where it is stolen, the unfortunate owner would be forever legally responsible for the

negligent operation by the thief regardless of the intervention of time or distance, be it years later and a thousand miles away. In fact, the reasoning of the court would not justify a limitation of the owner's liability to the negligence of the thief but would extend it to the negligent operation of any persons coming into possession through the thief. The consequences of such a holding are indeed unique.

Petitioner does not question but what a statute or regulation may prescribe a standard of conduct definitive of due care as a substitute for the "reasonably prudent man." However, Petitioner's act, though a violation of the regulation and therefore negligent, cannot subject him to liability if recognition is given the established concepts of legal causation.

This Court in *Southern Ry. Co.* v. *Walters*, 284 U. S. 190, held that the defendant railway was not responsible for injuries suffered by a boy who ran into the side of a train which, in violation of a safety ordinance, had not stopped before crossing the street at the scene of the accident. This court exonerated the Railway Company, saying that the failure to stop before entering the crossing in violation of the ordinance was not the proximate cause of plaintiff's injury. Thus a remote cause or condition, even arising from the violation of an ordinance, will not create liability for injuries although such injuries would not have occurred but for the remote cause or condition.

Such is the basis of every decision which has been found involving essentially the same facts as exist in the instant case. It was the basis of *Squires* v. *Brooks*, 44 App. D. C. 320, decided by the Court of Appeals in 1916. So too in *Caskey* v. *Katz & Besthoff, Ltd.*, 148 So. 76 (La. 1933); and *Slater* v. *T. C. Baker Co.*, 261 Mass. 424, 158 N. E. 778 (1927), reconsidered and distinguished in *Malloy* v. *Newman*, 310 Mass. 269, 37 N. E. (2d) 1001.

The effect of an intervening cause upon the responsibility of one violating a statute is well illustrated in *Horan* v. *Watertown*, 217 Mass., 185, 104 N. E. 464. The defendant in

violation of a state statute stored dynamite in an unlocked and unguarded tool chest within the limits of a highway. Small boys removed the dynamite and threw it upon a fire to the injury of the plaintiff. Applying the long recognized doctrine of caustion, the breach of the statute was held to be merely a "condition" upon which the intervening cause could operate.

Again it was held that the violation of a statute intended to minimize fire hazards by prohibiting the storage of oil upon a railway station platform was not the proximate cause of the fire which resulted when the oil was ignited by a third person. *Stone* v. *The Boston & A. Ry. Co.*, 171 Mass., 536, 51 N. E. 1.

By spelling both negligence and causality out of the breach of an ordinance, the Court of Appeals not only renders itself irreconcilably opposed to numerous cases involving the doctrine of last clear chance, but the application of the principle now announced by the court will necessarily emasculate that so-called humanitarian doctrine where the plaintiff's negligence arises, as frequently it does, from a violation of an ordinance or statute. Thus in *Arnold* v. *Owens*, 78 F(2d), 495, the plaintiff, a pedestrian, violated a statute designed for the protection of such persons by requiring them to walk on the side of the highway facing oncoming traffic. Plaintiff was struck from behind and severely injured. Applying last clear chance, plaintiff was permitted to recover, it being held that the violation of the statute by plaintiff was not a proximate cause of his injury, despite the fact that the statute was intended to prevent accidents of the very nature which occurred. This illustration can be multiplied without end, but the results reached in such cases cannot be attained under the doctrine now applied by the Court of Appeals, for if plaintiff's peril arises from a violation by him of a statute or ordinance designed for his protection, such violation would not only constitute negligence but proximate cause as well.

(2) The Court Ignored Every Prior Decision on the Same Question.

As previously indicated, the precise question in this case has been adjudicated three times to the knowledge of counsel. In each, the courts, though asserting or assuming that the act in leaving the car unlocked constituted negligence, nevertheless held that such negligence was not the proximate cause of its subsequent negligent operation by a thief. *Squires* v. *Brooks*, 44 App. D. C. 320; *Slater* v. *T. C. Baker Co.*, 261 Mass., 424, 158 N. E. 778; and *Castay* v. *Katz & Besthoff, Ltd.*, 148 So. 76 (La. 1933), all *supra*.

(3) At Most the Question of Proximate Cause is a Factual One for Determination by the Jury.

The Court of Appeals has swung from *Squires* v. *Brooks*, *supra*, holding the facts in question to be insufficient evidence of proximate cause as a matter of law, to the other extreme that such facts constitute proximate cause as a matter of law. At most, this is a factual question which the petitioner is entitled to submit to the jury. *The Milwaukee and St. Paul Ry. Co.* v. *Kellogg*, 94 U. S. 256.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of *Certiorari* is within the provisions of Rule 38 of this Court; that the problems presented have widespread importance in which this Court should exercise its power of review to settle the legal questions involved. It is therefore respectfully urged that a writ of *certiorari* should be granted.

FRANK J. HOGAN,
EDMUND L. JONES,
Counsel for Petitioner.

HOWARD BOYD,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 720

JAMES O. HARTMAN,

Petitioner,

vs.

WILLIE ROSS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

CHARLES H. HOUSTON,
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MARGARET A. HAYWOOD,
Of Counsel.

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No. 720

JAMES O. HARTMAN,

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Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Opinion Below.

The United States District Court for the District of Columbia rendered no opinion (R. 5). The opinion of the United States Court of Appeals for the District of Columbia, reported in — F. 2d —, is found in the record at pages 7-10.

Jurisdiction.

The jurisdiction of this Court is invoked by petitioner under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 28 U. S. C. Section 347 (a).

Question Presented.

Was the violation of Section 58 of Traffic and Motor Vehicle Regulations for the District of Columbia by petitioner the proximate cause of respondent's injuries?

Regulation Involved.

"Locks on Motor Vehicles. Every motor vehicle shall be equipped with a lock suitable to lock the starting lever, throttle, or switch, or gear shift lever, by which the vehicle is set in motion, and no person shall allow any motor vehicle operated by him to stand or remain unattended on any street or in any public place without first having locked the lever, throttle, or switch by which said motor vehicle may be set in motion." D. C. Traffic Regulations, 58.

Statement of the Matter Involved.

The stipulation of facts on which the case was disposed of appears in the record at pages 3-4.

Summary of Argument.

1. The decision of the United States Court of Appeals for the District of Columbia logically follows the development of the law governing motor vehicles in the District of Columbia as expressed in the decisions and legislation of Congress.

2. The decision of the Court of Appeals was on a question of local municipal law which has no effect beyond the borders of the District of Columbia. The decision is in line with the modern trends and developments of the law.

Argument.

I.

The decision of the United States Court of Appeals for the District of Columbia logically follows the development

of the law governing motor vehicles in the District of Columbia as expressed in the decisions and legislation of Congress.

Petitioner complains that the Court of Appeals overruled the case of *Squires* v. *Brooks*, 44 App. D. C. 320 (1916). Since the decision of *Squires* v. *Brooks* there has been a steady extension of the liability of the owner of a motor vehicle for negligent acts of a third person. For example, in 1932 a husband was held not liable for the wife's negligent operation of an automobile in the absence of proof of her agency for him.

Rubenstein v. *Williams*, 61 F. 2d 575, 61 App. D. C. 266 (1932).

In 1934, a father was held liable for permitting his son to drive his automobile to school notwithstanding he had an express agreement with his son that he should not be responsible for the son's actions.

Hardy v. *Smith*, 68 F. 2d 992, 63 App. D. C. 44 (1934).

On May 3, 1935, Congress passed a comprehensive Owner's Financial Responsibility Act governing the use of automobiles in the District of Columbia (49 Stat. 166 Ch. 89; D. C. Code 1940, Title 40, Ch. 4). It was provided in Section 3, among other things, "* * * Whenever any motor vehicle, after the passage of this chapter, shall be operated upon the public highways of the District of Columbia by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall, in case of accident, be deemed to be the agent of the owner of such motor vehicle, and the proof of the ownership of said motor vehicle shall be prima facie evidence that such person operated said motor vehicle with the consent of the owner. * * *" This development in the law logically required the Court to hold that

when in violation of the regulation quoted above petitioner left his motor truck at night unlocked in a public alley, he assumed the risk that a third person would start the vehicle and cause the harm complained of.

The present is a case in which the very injury occurred that the regulation sought to avoid as pointed out by the Court of Appeals. There is no similar regulation in the District of Columbia affecting any other property (R. 9).

II.

The decision of the Court of Appeals was on a question of local municipal law which has no effect beyond the borders of the District of Columbia. The decision is in line with the modern trends and developments of the law.

The Record shows (R. 4) that this case is based upon the traffic regulations of the District of Columbia, Section 58. These are local municipal regulations which have no force or effect beyond the District of Columbia and are, therefore, without the general significance required to ground the exercise of jurisdiction by this Court. Petitioner attempts to extend the decision of the Court to absurd limits by extreme hypothetical cases but the Court of Appeals was dealing with the case before it.

Certainly on the question of causation, the decision of the Court of Appeals accords with common sense and justice and the trend of Federal decisions. For example, *Massey-Harris Company* v. *Gill*, 64 F. 2d 792 (1933). Here the independent illegal act was of a nature which the regulation required the defendant to anticipate. The regulation required him to foresee that if his motor vehicle should be left unlocked on a public highway, a third person might start the vehicle and injure other persons or property lawfully using the highway. Under such circumstances, respondent's act is not isolated in the chain of causation but

continues to operate in the eyes of the law. See Anno. 78 A. L. R. 471 at page 480.

Conclusion.

The judgment below was clearly right; the opinion of the Court of Appeals, in a most detailed, logical and learned manner, refutes the petitioner's various contentions and therefore, this respondent has not attempted, at this time, to present an adequate argument on the merits. It is respectfully submitted that no useful purpose could be served by granting certiorari to review the opinion of the Court of Appeals for the District of Columbia in this case and the petition should be denied.

Respectfully submitted,

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Attorney for Respondent.

JOSEPH C. WADDY,
MARGARET A. HAYWOOD,
Of Counsel.